

JAN 24 2013

A BILL FOR AN ACT

RELATING TO REGISTRATION OF COVERED OFFENDERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Act 80 was passed in 2008 to amend chapter
2 846E, Hawaii Revised Statutes, Hawaii's covered offender
3 registration law, to take major steps toward compliance with
4 title I of the federal Adam Walsh Child Protection and Safety
5 Act of 2006, also known as the Sex Offender Registration and
6 Notification Act, and enable the Hawaii covered offender
7 registration program to effectively participate with the
8 nationwide network of sex offender registries.

9 When declaring the purpose of the Sex Offender Registration
10 and Notification Act, Congress stated: "In order to protect the
11 public from sex offenders and offenders against children, and in
12 response to the vicious attacks by violent predators . . .
13 Congress in this Act establishes a comprehensive national system
14 for the registration of those offenders." The Sex Offender
15 Registration and Notification Act was in response to a number of
16 high profile violent crimes committed by individuals who had
17 previously been convicted of sex crimes but under the old
18 standards were not required to register as sex offenders. Under

1 the Sex Offender Registration and Notification Act, the
2 predecessor sex offender program was repealed. The Sex Offender
3 Registration and Notification Act established new baseline sex
4 offender registry standards for state registries.

5 The sex offender registration and notification programs
6 serve a number of purposes. The programs provide systems for
7 tracking sex offenders released into our communities. In the
8 event of a violent sex crime, the programs provide law
9 enforcement with information on sex offenders in the area the
10 crime was committed. The information may help law enforcement
11 identify the perpetrator, and may help law enforcement to
12 quickly locate and apprehend the perpetrator. The programs may
13 also deter released offenders from committing other crimes
14 because they require offenders to maintain contact with
15 authorities and provide detailed information regarding their
16 whereabouts. The public notification aspects of the programs
17 allow members of the public access to information on sex
18 offenders in their area, thereby enabling them to take
19 reasonable measures to protect themselves.

20 The purpose of this Act is to clarify provisions in chapter
21 846E, Hawaii Revised Statutes, the State's covered offender
22 registration law, address important issues that have come up in

1 the implementation of the covered offender registration law, and
2 continue to make efforts toward Sex Offender Registration and
3 Notification Act compliance.

4 SECTION 2. Section 846E-1, Hawaii Revised Statutes, is
5 amended by adding the new definitions of "attorney general,"
6 "chief of police," "foreign conviction," "out-of-state
7 conviction," "permanent residence," "temporary residence," and
8 "tribal conviction" to be appropriately inserted and to read as
9 follows:

10 "Attorney general" means the attorney general of the State
11 of Hawaii, the department of the attorney general, or an
12 authorized representative of the attorney general.

13 "Chief of police" means the county chief of police, the
14 county police department, or an authorized representative of the
15 chief of police.

16 "Foreign conviction" means a conviction under the laws of:

17 (1) Canada, United Kingdom, Australia, or New Zealand; or

18 (2) Any other foreign country, if the United States

19 Department of State, in its Country Reports on Human

20 Rights Practices, has concluded that an independent

21 judiciary vigorously enforced the right to a fair

1 trial in that country during the year in which the
2 conviction occurred.

3 "Out-of-state conviction" means a conviction in any other
4 state of the United States, the District of Columbia, or the
5 five principal United States territories, including the
6 Commonwealth of Puerto Rico, Guam, American Samoa, the Northern
7 Mariana Islands, and the United States Virgin Islands.

8 "Permanent residence" means a building, permanent structure
9 or unit therein, or watercraft where the covered offender
10 resides and intends to reside indefinitely, or at least for the
11 next one hundred eighty days, and which the offender owns,
12 rents, or occupies with the consent of the owner, but excludes
13 motor vehicles.

14 "Temporary residence" means a building, permanent structure
15 or unit therein, watercraft, emergency shelter, or transitional
16 housing facility where the covered offender resides, but does
17 not intend to reside for more than one hundred eighty days, but
18 excludes motor vehicles.

19 "Tribal conviction" means a conviction by a tribal court of
20 a federally recognized Indian tribe."

1 SECTION 3. Section 846E-1, Hawaii Revised Statutes, is
2 amended by amending the definitions of "conviction", "crime
3 against minors", and "sexual offense" to read as follows:

4 "Conviction" means a judgment on the verdict, or a finding
5 of guilt after a plea of guilty or nolo contendere, excluding
6 the adjudication of a minor[-], and occurs on the date judgment
7 is entered.

8 "Crime against minors" excludes "sexual offenses" as
9 defined in this section and means a criminal offense that
10 consists of:

11 (1) Kidnapping of a minor, by someone other than a parent;

12 (2) Unlawful imprisonment in the first or second degree
13 that involves the unlawful imprisonment of a minor by
14 someone other than a parent;

15 (3) An act, as described in chapter 705, that is an
16 attempt, criminal solicitation, or criminal conspiracy
17 to commit one of the offenses designated in paragraph
18 (1) or (2); ~~[or]~~

19 (4) A criminal offense that is comparable to or which
20 exceeds one of the offenses designated in paragraphs
21 (1) through (3) ~~[or any]~~; or

22 (5) Any federal, military, ~~[or]~~ out-of-state, tribal, or

1 foreign conviction for any offense that, under the
2 laws of this State, would be a crime against minors as
3 designated in paragraphs (1) through ~~[(3)-]~~ (4).

4 "Sexual offense" means an offense that is:

5 (1) Set forth in section ~~[707-730(1)(a), 707-730(1)(b),~~
6 ~~707-730(1)(c), 707-730(1)(d) or (e), 707-731(1)(a),~~
7 ~~707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-~~
8 ~~732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-~~
9 ~~732(1)(e), 707-732(1)(f),]~~ 707-730(1), 707-731(1),
10 707-732(1), 707-733(1)(a), 707-733.6, [712-1202(1)(a),
11 712-1202(1)(b),] 712-1202(1), or 712-1203(1), but
12 excludes conduct that is criminal only because of the
13 age of the victim, as provided in section 707-
14 730(1)(b), or section 707-732(1)(b) if the perpetrator
15 is under the age of eighteen;

16 (2) An act defined in section 707-720 if the charging
17 document for the offense for which there has been a
18 conviction alleged intent to subject the victim to a
19 sexual offense;

20 (3) An act that consists of:

21 (A) Criminal sexual conduct toward a minor, including

but not limited to an offense set forth in
section 707-759;

(B) Solicitation of a minor who is less than fourteen
years old to engage in sexual conduct;

(C) Use of a minor in a sexual performance;

(D) Production, distribution, or possession of child
pornography chargeable as a felony under section
707-750, 707-751, or 707-752;

(E) Electronic enticement of a child chargeable under
section 707-756 or 707-757 if the offense was
committed with the intent to promote or
facilitate the commission of another covered
offense as defined in this section; or

(F) Solicitation of a minor to practice prostitution;

(4) A violation of privacy under section 711-1110.9;

(5) An act, as described in chapter 705, that is an
attempt, criminal solicitation, or criminal conspiracy
to commit one of the offenses designated in paragraphs
(1) through (4);

~~[(5)]~~ (6) A criminal offense that is comparable to or that
exceeds a sexual offense as defined in paragraphs (1)
through ~~[(4) or any]~~ (5); or

1 (7) Any federal, military, ~~[or]~~ out-of-state, tribal, or
2 foreign conviction for ~~[any]~~:

3 (A) Any offense that under the laws of this State
4 would be a sexual offense as defined in
5 paragraphs (1) through ~~[(4)]~~ (6); or

6 (B) Any offense that subjected the offender to sex
7 offender registration or public notification, or
8 both, in the other state or jurisdiction of
9 conviction, or would have if the offender had
10 been a resident of that other state or
11 jurisdiction.

12 ~~[(6) An act, as described in chapter 705, that is an~~
13 ~~attempt, criminal solicitation, or criminal conspiracy~~
14 ~~to commit one of the offenses designated in paragraphs~~
15 ~~(1) through (5).]~~ "

16 SECTION 4. Section 846E-1, Hawaii Revised Statutes, is
17 amended by repealing the definitions of "mental abnormality,
18 "personality disorder," and "predatory".

19 ~~["Mental abnormality" means a condition involving a~~
20 ~~disposition to commit criminal sexual offenses with a frequency~~
21 ~~that makes the person a menace to others.~~

1 ~~"Personality disorder" shall have the same meaning as the~~
2 ~~term is used in the Diagnostic and Statistical Manual of Mental~~
3 ~~Health Disorders: DSM IV, American Psychiatric Association,~~
4 ~~Diagnostic and Statistical Manual of Mental Disorders (4th ed.~~
5 ~~1994).~~

6 ~~"Predatory" means an act directed at:~~

7 ~~(1) A stranger, or~~

8 ~~(2) A person with whom a relationship has been established~~
9 ~~or promoted for the primary purpose of~~
10 ~~victimization."]~~

11 SECTION 5. Section 846E-2, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§846E-2 Registration requirements.** (a) A covered
14 offender shall register with the attorney general and comply
15 with the provisions of this chapter for life or for a shorter
16 period of time as provided in this chapter. Registration under
17 this subsection is required whenever the covered offender,
18 whether or not a resident of this State, remains in this State
19 for more than ten days or for an aggregate period exceeding
20 thirty days in one calendar year. A covered offender shall be
21 eligible to petition the court in a civil proceeding for an
22 order that the covered offender's registration requirements

1 under this chapter be terminated, as provided in section 846E-
2 10.

3 ~~[(b) A person who establishes or maintains a residence in~~
4 ~~this State and who has not been designated as a covered offender~~
5 ~~by a court of this State but who has been designated as a~~
6 ~~covered offender, sex offender, offender against minors, repeat~~
7 ~~covered offender, sexually violent predator, or any other sexual~~
8 ~~offender designation in another state or jurisdiction and was,~~
9 ~~as a result of such designation, subjected to registration or~~
10 ~~community or public notification, or both, or would be if the~~
11 ~~person was a resident of that state or jurisdiction, without~~
12 ~~regard to whether the person otherwise meets the criteria for~~
13 ~~registration as a covered offender, shall register in the manner~~
14 ~~provided in this section and shall be subject to community and~~
15 ~~public notification as provided in section 846E-3. A person who~~
16 ~~meets the criteria of this subsection is subject to the~~
17 ~~requirements and penalty provisions of section 846E-9 until the~~
18 ~~person successfully petitions the attorney general for~~
19 ~~termination of registration requirements by:~~

20 ~~(1) Providing an order issued by the court that designated~~
21 ~~the person as a covered offender, sex offender,~~
22 ~~offender against minors, repeat covered offender,~~

1 ~~sexually violent predator, or any other sexual~~
2 ~~offender designation in the state or jurisdiction in~~
3 ~~which the order was issued, which states that such~~
4 ~~designation has been removed or demonstrates to the~~
5 ~~attorney general that such designation, if not imposed~~
6 ~~by a court, has been removed by operation of law or~~
7 ~~court order in the state or jurisdiction in which the~~
8 ~~designation was made, and such person does not meet~~
9 ~~the criteria for registration as a covered offender~~
10 ~~under the laws of this State; or~~

11 ~~(2) Demonstrating that the out of state convictions upon~~
12 ~~which the sexual offender designation was established~~
13 ~~are not covered offenses under section 846E-1, thereby~~
14 ~~showing that such person does not meet the criteria~~
15 ~~for registration as a covered offender under the laws~~
16 ~~of this State.~~

17 ~~If the covered offender is not satisfied with the decision of~~
18 ~~the attorney general on the request for termination of~~
19 ~~registration requirements, the covered offender may appeal the~~
20 ~~decision pursuant to chapter 91.~~

21 ~~(e)]~~ (b) Each provision of this chapter applicable to sex
22 offenders shall also be applicable to offenders against minors,

1 unless offenders against minors are specifically excluded.
 2 Whenever a covered offender's public information is made
 3 publicly accessible, separate registries shall be maintained
 4 for:

5 (1) Sex offenders; and

6 (2) Offenders against minors.

7 ~~[(d)]~~ (c) Registration information for each covered
 8 offender shall include a signed statement by the covered
 9 offender containing:

10 (1) The name, all prior names, nicknames and pseudonyms,
 11 and all aliases used by the covered offender or under
 12 which the covered offender has been known and other
 13 identifying information, including date of birth and
 14 any alias date of birth, social security number and
 15 any alias social security number, sex, race, height,
 16 weight, and hair and eye color;

17 (2) The actual address and telephone number of the covered
 18 offender's permanent residence or ~~[any current,~~
 19 ~~temporary address where the covered offender resides,]~~
 20 the address of the covered offender's current
 21 temporary residence, or if an address is not
 22 available, a description of the place or area in which

1 the covered offender resides for at least thirty
2 nonconsecutive days within a sixty-day period, and for
3 each address or place where the covered offender
4 resides, how long the covered offender has resided
5 there;

6 (3) The actual address or description of the place or
7 area, the actual length of time of the stay, and
8 telephone number where the covered offender is staying
9 for a period of more than ten days, if other than the
10 stated residence;

11 (4) If known, the future address and telephone number of
12 the place where the covered offender is planning to
13 reside, if other than the stated residence;

14 (5) Any electronic mail address, any instant message name,
15 any internet designation or moniker, and any internet
16 address used for routing or self-identification;

17 (6) Any cell phone number and other designations used for
18 routing or self-identification in telephonic
19 communications;

20 (7) Names and, if known, actual business addresses of
21 current and known future employers, including
22 information for any place where the covered offender

works as a volunteer or otherwise works without remuneration, and the starting and ending dates of any such employment;

(8) For covered offenders who may not have a fixed place of employment, a description of the places where such a covered offender works, such as information about normal travel routes or the general area or areas in which the covered offender works;

(9) Professional licenses held by the covered offender;

(10) Names and actual addresses of current and known future educational institutions with which the covered offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;

(11) The year, make, model, color, and license or registration or other identifying number of all vehicles, including automobiles, watercrafts, and aircrafts, currently owned or operated by the covered offender and the address or description of the place or places where the covered offender's vehicle or

1 vehicles are habitually parked, docked, or otherwise
2 kept;

3 (12) Passports and information about the passports, if the
4 covered offender has passports, and documents
5 establishing immigration status and information about
6 these documents, if the covered offender is an alien;

7 (13) A statement listing all covered offenses for which the
8 covered offender has been convicted or found unfit to
9 proceed or acquitted pursuant to chapter 704;

10 (14) A statement indicating whether the covered offender
11 has received or is currently receiving treatment
12 ordered by a court of competent jurisdiction or by the
13 Hawaii paroling authority;

14 (15) A statement indicating whether the covered offender is
15 a United States citizen; and

16 (16) Any additional identifying information about the
17 covered offender.

18 [~~e~~] (d) The following information shall also be included
19 in the registry for each covered offender:

20 (1) A current photograph of the covered offender;

21 (2) A physical description of the covered offender,

1 including a description of particular identifying
2 characteristics such as scars or tattoos;

3 (3) Confirmation that the covered offender has provided
4 digitized fingerprints and palm prints of the covered
5 offender;

6 (4) Judgment of conviction, judgment of acquittal, or
7 judicial determination of unfitness to proceed
8 documenting the criminal offense or offenses for which
9 the covered offender is registered;

10 (5) The text, or an electronic link to the text, of the
11 provision of law defining the criminal offense or
12 offenses for which the covered offender is registered;

13 (6) The criminal history of the covered offender, or an
14 electronic link to the criminal history, including the
15 date of all arrests and convictions, the status of
16 parole, probation, or supervised release, registration
17 status, and the existence of any outstanding arrest
18 warrants for the covered offender;

19 (7) Confirmation that the covered offender has provided a
20 DNA buccal swab sample as required by chapter 844D;

21 (8) Digitized copies of a valid driver's license or

1 identification card issued to the covered offender, or
2 an electronic link to such records; and

3 (9) Digitized copies of passports and documents
4 establishing immigration status, or an electronic link
5 to such records.

6 [~~f~~] (e) Whenever a covered offender provides
7 registration information, during initial registration as a
8 covered offender or when providing notice of a change in
9 registration information, the covered offender also shall sign a
10 statement verifying that all of the registration information is
11 accurate and current.

12 [~~g~~] (f) In addition to the requirement under subsection
13 (a) to register with the attorney general and comply with the
14 provisions of this chapter until a court relieves the covered
15 offender of the registration requirements of this chapter, each
16 covered offender shall also register in person with the chief of
17 police where the covered offender resides or is present.
18 Registration under this subsection is for the purpose of
19 providing the covered offender's photograph, fingerprints, and
20 registration information. Registration under this subsection is
21 required whenever the covered offender, whether or not a
22 resident of this State, remains in this State for more than ten

1 days or for an aggregate period exceeding thirty days in one
2 calendar year. Covered offenders required to register in person
3 with the chief of police under this subsection shall register no
4 later than three working days after the earliest of:

- 5 (1) Arrival in this State;
- 6 (2) Release from incarceration;
- 7 (3) Release from commitment;
- 8 (4) Release on furlough;
- 9 (5) Conviction for a covered offense, unless incarcerated;
- 10 (6) Release on probation;
- 11 (7) Placement on parole; or
- 12 (8) Arrival in a county in which the covered offender
13 resides or expects to be present for a period
14 exceeding ten days.

15 In addition to any other requirement to register under this
16 subsection or subsection (a), each covered offender shall report
17 in person every five years until June 30, 2009, and beginning on
18 July 1, 2009, every year, within the thirty-day period following
19 the offender's date of birth, to the chief of police where the
20 covered offender resides, or to such other department or agency
21 that may be designated by the attorney general in rules adopted
22 pursuant to chapter 91 for purposes of the administration of

1 this subsection, and shall review the existing information in
2 the registry that is within the offender's knowledge, correct
3 any information that has changed or is inaccurate, provide any
4 new information that may be required, and allow the police and
5 such other department or agency designated by the attorney
6 general to take a current photograph of the offender.

7 ~~[(h)]~~ (g) The registration provisions of this section
8 shall apply to all covered offenders without regard to:

- 9 (1) The date of the covered offender's conviction;
- 10 (2) The date of finding, pursuant to chapter 704, of the
11 covered offender's unfitness to proceed; or
- 12 (3) The date of the covered offender's acquittal due to
13 mental disease, disorder, or defect, pursuant to
14 chapter 704."

15 SECTION 6. Section 846E-4, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) Each person, or that person's designee, in charge of
18 a jail, prison, hospital, school, or other institution to which
19 a covered offender has been committed pursuant to a conviction,
20 or an acquittal or finding of unfitness to proceed pursuant to
21 chapter 704, for a covered offense, and each judge, or that
22 judge's designee, who continues bail for or releases a covered

1 offender following [~~a guilty verdict or a plea of guilty or no~~
2 ~~contendere,~~] sentencing and the entry of a judgment of
3 conviction, who releases a covered offender on probation or who
4 discharges a covered offender upon payment of a fine, and each
5 agency having jurisdiction, shall, prior to the discharge,
6 parole, or release of the covered offender:

- 7 (1) Explain to the covered offender the duty to register
8 and the consequences of failing to register under this
9 chapter;
- 10 (2) Obtain from the covered offender all of the
11 registration information required by this chapter;
- 12 (3) Inform the covered offender that if at any time the
13 covered offender changes any of the covered offender's
14 registration information, the covered offender shall
15 notify the attorney general of the new registration
16 information in writing within three working days;
- 17 (4) Inform the covered offender that, if at any time the
18 covered offender changes residence to another state,
19 the covered offender shall register the new address
20 with the attorney general and also with a designated
21 law enforcement agency in the new state, if the new
22 state has a registration requirement, within the

1 period of time mandated by the new state's sex
2 offender registration laws;

3 (5) Obtain and verify fingerprints and a photograph of the
4 covered offender, if these have not already been
5 obtained or verified in connection with the offense
6 that triggers the registration;

7 (6) Require the covered offender to sign a statement
8 indicating that the duty to register has been
9 explained to the covered offender; and

10 (7) Give one copy of the signed statement and one copy of
11 the registration information to the covered offender."

12 SECTION 7. Section 846E-5, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§846E-5 Periodic verification of registration**
15 **information.** ~~[Unless the covered offender is incarcerated or~~
16 ~~has registered with a designated law enforcement agency after~~
17 ~~establishing residence in another state, on the first day of~~
18 ~~every ninety-day period following the covered offender's initial~~
19 ~~registration date:]~~ (a) For the covered offender who has
20 registered a permanent residence address to which the United
21 States Postal Service will deliver mail or a permanent residence

1 and a registered post office box, during the first week of the
2 months of January, April, July, and October of every year,

3 ~~[(1) — The]~~ the attorney general shall mail a nonforwardable
4 verification form to the last reported permanent
5 residence address or post office box of the covered
6 offender~~[+]~~. Upon receipt of the verification form:

7 ~~[(2)]~~ (1) The covered offender shall sign the verification
8 form and state that the covered offender still resides
9 at the address last reported to the attorney general
10 and that no other registration information has changed
11 or shall provide the new information; and

12 ~~[(3)]~~ (2) The covered offender shall mail the signed and
13 completed verification form to the attorney general
14 within ten days after receipt of the form~~[+and~~

15 ~~(4) If the covered offender fails to mail the verification~~
16 ~~form to the attorney general within ten days after~~
17 ~~receipt of the form, the covered offender shall be in~~
18 ~~violation of this chapter, unless the covered offender~~
19 ~~proves that the covered offender has not changed the~~
20 ~~residence address.~~

21 ~~This section shall become effective on July 1, 1998].~~

22 (b) For the covered offender who has registered:

1 (1) A temporary residence address;

2 (2) A description of a place or area in which the covered
3 offender resides for at least thirty nonconsecutive
4 days within a sixty-day period;

5 (3) No place of residence; or

6 (4) A permanent residence address, to which the United
7 States Postal Service will not deliver mail, and has
8 no registered post office box,

9 by the last day of every month, the covered offender shall
10 report to the chief of police where the covered offender
11 resides, or to such other department or agency that may be
12 designated by the attorney general in rules adopted pursuant to
13 chapter 91 for purposes of administration of this section, and
14 shall review the existing information in the registry that is
15 within the offender's knowledge, correct any information that
16 has changed or is inaccurate, provide any new information that
17 may be required, and disclose every location where the covered
18 offender has slept in the previous month.

19 (c) The periodic verification provisions of this section
20 shall not apply to covered offenders who are incarcerated or
21 have registered with a designated law enforcement agency after
22 establishing residence in another state."

SECTION 8. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A covered offender required to register under this chapter, who changes any of the covered offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person is absent from the person's registered residence for ten or more days. If, at any time, a covered offender required to register under this chapter is absent from the person's registered residence for ten or more days ~~and fails to establish a new residence within the ten days that the covered offender is absent from their registered residence~~, the covered offender ~~[, in addition to notifying]~~ shall notify the attorney general in writing within three working days ~~[that the covered offender no longer resides at the covered offender's registered residence, shall also report to any police station in the State by the last day of every month for verification of identity by photograph and fingerprint impression until the covered offender establishes a new residence and notifies the~~

1 ~~attorney general in writing of the actual address of the new~~
2 ~~residence. Each time the covered offender reports to a police~~
3 ~~station, the covered offender shall disclose every location~~
4 ~~where the covered offender has slept in the previous month.] of~~
5 the covered offender's current residence information. If the
6 covered offender leaves the State and establishes a new
7 residence [is] in another state that has a registration
8 requirement, the person shall register with the designated law
9 enforcement agency in the state to which the person moves,
10 within the period of time mandated by the new state's sex
11 offender registration laws."

12 SECTION 9. Section 846E-9, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§846E-9 Failure to comply with covered offender**
15 **registration requirements.** (a) A person commits the offense of
16 failure to comply with covered offender registration
17 requirements if the person is required to register under this
18 chapter and the person intentionally, knowingly, or recklessly:

19 (1) Fails to register with the attorney general by
20 providing to the attorney general or the Hawaii
21 criminal justice data center the person's registration
22 information;

1 (2) Fails to report in person every five years until
2 June 30, 2009, and beginning on July 1, 2009, once
3 every year, during the thirty-day period following the
4 offender's date of birth, to the chief of police where
5 the covered offender's residence is located, or to
6 such other department or agency designated by the
7 attorney general;

8 (3) While reporting to the chief of police or such other
9 department or agency designated by the attorney
10 general, fails to correct information in the registry
11 within the offender's knowledge that has changed or is
12 inaccurate regarding information required by section
13 [~~846E-2(d)(1)~~] 846E-2(c)(1) through (12);

14 (4) While reporting to the chief of police or such other
15 department or agency designated by the attorney
16 general, fails to provide new information that may be
17 required by section [~~846E-2(d)(1)~~] 846E-2(c)(1)
18 through (12);

19 (5) While reporting to the chief of police or such other
20 department or agency designated by the attorney
21 general, does not allow the police or other designated

department or agency to take a current photograph of the person;

(6) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of section [~~846E-2(g)~~] 846E-2(f) require the person to do so;

(7) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the covered offender's registration information in writing within three working days of the change;

(8) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;

(9) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current;

(10) Having failed to establish a new residence within the ten days while absent from the person's registered residence for ten or more days[+]

1 ~~(A) Fails]~~ fails to notify the attorney general in
2 writing within three working days [~~that the~~
3 ~~person no longer resides at the person's~~
4 ~~registered residence,~~] of the covered offender's
5 current residence information; or

6 ~~[(B) Fails to report to a police station in the State~~
7 ~~by the last day of every month; or]~~

8 (11) Fails to mail or deliver the periodic
9 verification of registration information form to the
10 attorney general within ten days of receipt, as
11 required by section 846E-5; provided that it shall be
12 an affirmative defense that the periodic verification
13 form mailed to the covered offender was delivered when
14 the covered offender was absent from the registered
15 address and the covered offender had previously
16 notified the Hawaii criminal justice data center that
17 the covered offender would be absent during the period
18 that the periodic verification form was delivered[-];

19 (12) Fails to report to the chief of police where the
20 covered offender resides, or to such other department
21 or agency that may be designated by the attorney
22 general in rules adopted pursuant to chapter 91, by

1 the last day of every month for verification of the
2 covered offender's registration information, as
3 required by section 846E-5(b); or

4 (13) Fails to disclose every location where the covered
5 offender has slept in the previous month, as required
6 by section 846E-5(b).

7 (b) With respect to paragraph (1), (2), (6), (7), (10),
8 (11), or (12) of subsection (a), it shall be an affirmative
9 defense that the covered offender failed to comply with the
10 requirements of the paragraph because the covered offender was
11 in custody or civilly committed.

12 ~~[(b)]~~ (c) Failure to comply with covered offender
13 registration requirements is a class C felony."

14 SECTION 10. Section 846E-10, Hawaii Revised Statutes, is
15 amended as follows:

16 (1) By amending subsection (a) to read as follows:

17 "(a) Tier 3 offenses. A covered offender whose covered
18 offense is any of the following offenses shall register for life
19 and, except as provided in subsection (e), may not petition the
20 court, in a civil proceeding, for termination of registration
21 requirements:

22 (1) Any offense set forth in section 707-730(1)(a), (b),

1 (d), or (e), 707-731(1)(a) or (b), 707-732(1)(a), (b),
2 or (f), or 707-733.6;

3 (2) An offense set forth in section 707-720; provided that
4 the offense involves kidnapping of a minor by someone
5 other than a parent;

6 (3) An offense that is an attempt, criminal solicitation,
7 or criminal conspiracy to commit any of the offenses
8 in paragraph (1) or (2);

9 (4) Any criminal offense that is comparable to one of the
10 offenses in paragraph (1), (2), or (3); or

11 (5) Any federal, military, ~~[or]~~ out-of-state, tribal, or
12 foreign offense that is comparable to one of the
13 offenses in paragraph (1), (2), or (3)."

14 (2) By amending subsections (c) and (d) to read as
15 follows:

16 "(c) Tier 2 offenses. A covered offender who has
17 maintained a clean record for the previous twenty-five years,
18 excluding any time the offender was in custody or civilly
19 committed, and who has substantially complied with the
20 registration requirements of this chapter for the previous
21 twenty-five years, or for the portion of that twenty-five years
22 that this chapter has been applicable, and who is not a repeat

covered offender may petition the court, in a civil proceeding, for termination of registration requirements; provided that the covered offender's most serious covered offense is one of the following:

- (1) Any offense set forth in section 707-730(1)(c), 707-731(1)(c), 707-732(1)(c), 707-750, 707-751, 712-1202(1)(b), or 712-1203(1)(b), as section 712-1203(1)(b) read prior to its amendment pursuant to section 9 of Act 147, Session Laws of Hawaii 2008;
- (2) An offense set forth in section 707-720; provided that the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An offense set forth in section 707-756 that includes an intent to promote or facilitate the commission of another felony covered offense as defined in section 846E-1;
- (4) An offense that is an attempt, criminal solicitation, or criminal conspiracy to commit any of the offenses in paragraph (1), (2), or (3);
- (5) Any criminal offense that is comparable to one of the offenses in paragraph (1), (2), (3), or (4); or

1 (6) Any federal, military, ~~[or]~~ out-of-state, tribal, or
2 foreign offense that is comparable to one of the
3 offenses in paragraph (1), (2), (3), or (4).

4 (d) Tier 1 offenses. A covered offender who has
5 maintained a clean record for the previous ten years, excluding
6 any time the offender was in custody or civilly committed, and
7 who has substantially complied with the registration
8 requirements of this chapter for the previous ten years, or for
9 the portion of that ten years that this chapter has been
10 applicable, and who is not a repeat covered offender may
11 petition the court, in a civil proceeding, for termination of
12 registration requirements; provided that the covered offender's
13 most serious covered offense is one of the following:

14 (1) Any offense set forth in section 707-732(1)(d) or (e),
15 707-733(1)(a), 707-752, 707-759, 711-1110.9,
16 712-1202(1)(a), or 712-1203(1);

17 (2) An offense set forth in section 707-721 or 707-722;
18 provided that the offense involves unlawful
19 imprisonment of a minor by someone other than a
20 parent;

21 (3) An offense set forth in section 707-757 that includes

an intent to promote or facilitate the commission of
another covered offense as defined in section 846E-1;

(4) An offense that is an attempt, criminal solicitation,
or criminal conspiracy to commit any of the offenses
in paragraph (1), (2), or (3);

(5) Any criminal offense that is comparable to one of the
offenses in paragraph (1), (2), (3), or (4); ~~[or]~~

(6) Any federal, military, ~~[or]~~ out-of-state, tribal, or
foreign offense that is comparable to one of the
offenses in paragraph (1), (2), (3), or (4) ~~[or]~~ or

(7) Any other covered offense that is not specified in
subsection (a) or (c) or paragraph (1), (2), (3), (4),
(5), or (6) above."

SECTION 11. Sections 2, 3, 5, 6, 7, 8, 10, and 11 shall
apply to any acts committed prior to, on, or after the effective
date of this Act.

SECTION 12. Section 9 of this Act does not affect rights
and duties that matured, penalties that were incurred, and
proceedings that were begun, before the effective date of this
Act.

SECTION 13. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

S.B. NO. 1016

1 SECTION 14. This Act, upon its approval, shall take effect
2 on January 1, 2014.

3

4

INTRODUCED BY: 

5

BY REQUEST

S.B. NO. 1016

Report Title:

Covered Offenders; Registration of

Description:

Adds comparable foreign convictions and tribal convictions to covered offenses; makes offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law; makes it clear that a covered offender must register and report the offender's permanent residence, current temporary residence, or if an address is not available, a description of the place or area in which the covered offender resides; amends the definition of "conviction" in section 846E-1, Hawaii Revised Statutes, to clarify that conviction, for purposes of sex offender registration, occurs on the date judgment is entered; creates a tier classification for any covered sexual offenses that are not clearly included within the current tier classification law; addresses the problem of covered offenders who do not have registered residences to which the post office can deliver mail and cannot receive the ninety-day verification mailings by requiring these offenders to report in person once per month; and repeals the definitions of "mental abnormality," "personality disorder," and "predatory."

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO REGISTRATION OF COVERED OFFENDERS.

PURPOSE: Update chapter 846E, Hawaii Revised Statutes, to clarify provisions, address issues that have come up in the implementation of the covered offender registration law, and continue to make efforts toward Sex Offender Registration and Notification Act (SORNA) compliance by:

- (1) adding comparable foreign convictions and tribal convictions to covered offenses;
- (2) making offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law;
- (3) making the law clear that a covered offender must register and report the offender's permanent residence, current temporary residence, or if an address is not available, a description of the place or area in which the covered offender resides;
- (4) amending the definition of "conviction" in section 846E-1 to clarify that conviction, for purposes of sex offender registration, occurs on the date judgment is entered;
- (5) creating a tier classification for any covered sexual offenses that are not included within the current tier classification law;
- (6) addressing the problem of covered offenders who do not have registered residences to which the post office can deliver mail, and therefore cannot receive the 90-day verification mailings, by requiring these offenders to report to the chief of police once per month;
- (7) creating a new offense for those covered offenders who are required to and fail to report once per month;
- (8) creating a new offense for those covered offenders

who fail to disclose every location where the offender has slept in the previous month as required by law; (9) correcting an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; (10) repealing the definitions of "mental abnormality," "personality disorder," and "predatory," which are no longer used in the chapter; and (11) making it an affirmative defense that the covered offender failed to comply with the registration requirements because the covered offender was in custody or civilly committed.

MEANS: Amend sections 846E-1, 846E-2, 846E-4(a), 846E-5, 846E-6(a), 846E-9, and 846E-10(a), (c), and (d), Hawaii Revised Statutes.

JUSTIFICATION: Issues have arisen during the course of implementation of the provisions of chapter 846E, Hawaii Revised Statutes, regarding the registration of covered offenders. This bill is intended to update and improve the covered offender registration laws.

In section 846E-1, Hawaii Revised Statutes, the definitions of "crime against minor" and "sexual offense," which establish the covered offenses for registration, are being amended to include comparable foreign convictions and tribal convictions to comply with the federal requirements of the Sex Offender Registration and Notification Act (SORNA), title I of the Adam Walsh Child Protection and Safety Act of 2006. Pursuant to SORNA guidelines, a definition of "foreign conviction" has also been added to the section. A definition for "out-of-state conviction" was added for clarification.

The definition of "sexual offense" is also being amended to include any convictions for offenses from other jurisdictions that subjected the offender to sex offender registration or notification in the

jurisdiction of conviction. The amendment will make offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law. In evaluating offenders with convictions from other jurisdictions, it sometimes is very difficult to determine whether or not, and how, Hawaii registration requirements apply. Some offenses from other jurisdictions are very different from Hawaii law. This bill will facilitate the process and make it clearer for everyone that if the laws in the jurisdiction of conviction required the offender to register, then if the offender moves to Hawaii, the offender must also register in Hawaii. To conform to this change in the law, section 846E-2(b), Hawaii Revised Statutes, is being repealed. Subsection (b) requires offenders from other jurisdictions, who were subject to registration or public notification requirements in the other jurisdiction, to register in Hawaii until it was established that the out-of-state conviction was not a covered offense under chapter 846E.

Section 846E-2(a), Hawaii Revised Statutes, is being amended to clarify the basic registration requirement, and make it clear that covered offenders, whether or not residents of this State, who remain in the State for more than ten days or for an aggregate period exceeding thirty days in one calendar year, must register with the Attorney General. This requirement is consistent with section 846E-2(g), which sets out the requirement to register with the chief of police.

Section 846E-2(d)(2), Hawaii Revised Statutes, is being amended to clarify the registration information required of a covered offender regarding the place of residence. The law currently requires an offender to report:

The actual address and telephone number of the covered offender's residence or any current temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender resides, how long the covered offender has resided there[.]

"Residence" and "temporary address where the covered offender resides" are not defined. This bill amends the terms to "permanent residence" and "temporary residence" and provides definitions for both terms. With these amendments, covered offenders will be required to register **permanent residences, temporary residences, or if an address is not available, a description of the place** that the offender resides.

The two new terms, "permanent residence" and "temporary residence," are also important because this bill is amending section 846E-5, Hawaii Revised Statutes. That section sets out the requirements for the periodic verification of registration information. The section currently requires the Attorney General, every ninety days, to mail out a verification form to the last reported address of the covered offender, and requires the offender to fill out the form and return it. The section does not address the problem of offenders who only have temporary addresses, or have no addresses, and cannot receive any mail. The law is not clear as to how these offenders are to provide periodic verification of their registration information.

With the proposed amendments to section 846E-5, offenders who register permanent residence addresses to which mail can be delivered, or a permanent residence with a

post office box, will be subject to the ninety-day mail verification provisions. Offenders who register temporary residence addresses, a description of a place with no mail address, no place of residence, or a permanent address to which the United States Postal Service will not deliver mail, will be required to report once per month to any police station to verify the offender's registration information.

Section 846E-9(a), Hawaii Revised Statutes, sets out the offenses for failing to comply with covered offender registration requirements. This section is being amended to create a new offense for those covered offenders who register a temporary address or no address and fail to report once per month to the chief of police to verify the registration information, and a new offense for those covered offenders who are required to report once per month to the chief of police and fail to disclose every location where the covered offender has slept in the previous month.

Section 846E-9, Hawaii Revised Statutes, is also being amended by adding a new subsection (b) that makes it an affirmative defense that the covered offender failed to comply with registration requirements because the offender was in custody or civilly committed. This is intended to address the concern that it is sometimes difficult for prosecutors to disprove that a covered offender did not comply with registration requirements because the offender was in custody or civilly committed.

This bill amends the definition of "conviction" in section 846E-1, Hawaii Revised Statutes, to clarify that "conviction," for purposes of sex offender registration, occurs on the date **judgment is entered**. The various jurisdictions in Hawaii have inconsistently interpreted the

law regarding the point in time in the criminal justice process when the registration requirement begins. While some start the registration process after plea, others wait until sentencing has been completed. This amendment will create uniformity in the application of registration requirements.

To be consistent with the amendment to the definition of "conviction," section 846E-4(a), Hawaii Revised Statutes, is also being amended to provide that the court's responsibility, to advise a covered offender of the registration requirements and to start the registration process, begins after sentencing and the **entry of a judgment** of conviction. The current law requires the court to take action after "a guilty verdict or a plea of guilty or nolo contendere."

Subsections (a), (c), and (d) of section 846E-10, Hawaii Revised Statutes, are being amended to include the tier classifications for the new covered foreign and tribal offenses.

Section 846E-10(d), Hawaii Revised Statutes, is also being amended to create a residual category in the tier 1 classification, to categorize any covered sexual offenses that are not clearly included within the current tier classification law. Some offenses, especially those from other jurisdictions, can be difficult to classify in a tier. This amendment addresses that concern.

This bill repeals paragraph (4) from section 846E-5, Hawaii Revised Statutes. That paragraph refers to a violation of the chapter if the covered offender fails to mail the periodic verification form to the Attorney General within ten days after receipt of the form, "unless the covered offender proves that the covered offender has not changed the residence address." This provision is confusing and unnecessary

because section 846E-9 sets out the offenses for failure to comply with registration requirements; and section 846E-9(11) sets out the offense for failure to return the periodic verification form within ten days, and provides an affirmative defense that the form was mailed out when the offender was absent from the offender's registered address and had notified the Attorney General of the offender's absence. Thus, paragraph (4) from section 846E-5 conflicts with section 846E-9 and appears to attempt to create a defense that does not make sense. If the covered offender has not changed the offender's address and has received the verification form, the offender must return the form, and failure to do so should be an offense.

Section 846E-1, Hawaii Revised Statutes, is also being amended to repeal the definitions of "mental abnormality, "personality disorder," and "predatory." These terms were necessary for a section of chapter 846E that has already been repealed.

Impact on the public: This bill will clarify certain issues regarding sex offender registration and make it easier for the public to understand and follow the law.

Impact on the department and other agencies: This bill will clarify the law and facilitate the application and administration of the sex offender registration law.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	None.

OTHER AFFECTED
AGENCIES:

Judiciary, county prosecutors, and the
Office of the Public Defender

EFFECTIVE DATE:

January 1, 2014.